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No. 72-397

In the Supreme Court of the United States

OCTOBER TERM, 1972

BONELLI CATTLE COMPANY, ET AL., PETITIONERS

v.

THE STATE OF ARIZONA

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

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This memorandum is submitted in response to the invitation of this Court on November 20, 1972, requesting the Solicitor General to express the view of the United States in this case.

1. The Bonelli Cattle Company and others instituted this action in the Superior Court of Mohave County, Arizona, to quiet title to a parcel of land along a rechannelized portion of the Colorado River on the Arizona side. Because of river stabilization due to construction of Hoover Dam, and the subsequent rechannelization resulting from dredging operations by the federal government in 1959 (Pet. 14-15), the land in question, which had previously formed a portion of

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the natural bed of the Colorado River, was made permanently dry. Petitioners claim title under a deed acquired in August 1955 from a grantor whose title traced to a federal patent permit issued by the United States on November 5, 1910, to Santa Fe Pacific Railroad (Pet. App. 3a). Their position is that the portion of the river bed which, after rechannelization, was not used for the flow of water reverted to the previous owners. The State of Arizona, on the other hand, contended that the recently dried land belongs to the State as part of the original bed of a navigable river, and that the sudden change in the flow of water due to federal dredging operations did not divest the State of its title.[1]

The Superior Court entered judgment quieting title in Bonelli Cattle Company, and the Arizona Court of Appeals affirmed (11 Ariz. App. 412, 464 P.2d 999). On appeal to the Arizona Supreme Court, the judgment was reversed (Pet. App. 1a–12a), one judge dissenting (Pet. App. 12a–36a). 107 Ariz. 465, 489 P.2d 699. The majority found that the dried land lay between what was the ordinary high water mark of the river in this area just prior to its rechannelization and what is presently the ordinary high water mark of the river as rechannelized. (The rechannelization did not change the stream thread, but only narrowed the river

[1] As the Arizona Supreme Court stated in its opinion on rehearing (Pet. App. 3b): "The title to all lands within the beds of navigable waters including all reclaimed lands which formerly were beneath navigable waters up to the ordinary high water mark was quit claimed in 1953 to the states by the Submerged Lands Act of Congress, 67 Stat. 29, 43 U.S.C.A. § 1301 *et seq.*"

by increasing its depth so as to reduce the loss of water through evaporation.) Since the change in the flow of water was sudden and directly attributable to the dredging operations, the majority concluded that the State retained title to all the land—whether wet or dry—within the navigable river bed as measured by the original ordinary high water marks.

2. Apparently the Arizona Supreme Court resolved the title dispute to the riparian lands involved here by looking to the law of Arizona. To the extent that its decision rests on an interpretation of state law, it is, of course, unassailable in this Court.

It is our view that the controversy in this case should have been decided under principles of federal, rather than state, law, since the land in question had been conveyed under a federal patent permit to Bonelli Cattle Company's predecessor-in-interest prior to Arizona's statehood. See *Hughes* v. *Washington,* 389 U.S. 290. We believe however, that the Arizona Supreme Court reached the correct result in this case as a matter of federal law.

It is well settled under federal law that riparian land titles and titles to river beds are affected by gradual changes in the flow of water due to accretion or erosion. *Hughes* v. *Washington, supra,* 389 U.S. at 293. Where there is a gradual and imperceptible accumulation of land on a navigable river bank, whether by way of alluvion or dereliction,[2] the federal

[2] Alluvion is land added by the deposit of silt and debris out of the water. Derelicted or relicted land is land added by the recession of the water leaving a portion of the bed dry. See Lundquist, *Artificial Additions to Riparian Land: Extending the Doctrine of Accretion*, 14 Arizona L. Rev. 315, 321 (1972). The Lundquist article is reproduced at Pet. App. I.

courts have recognized the riparian owner as the beneficiary. He acquires title to such accreted lands, even if the accretion results from man-made, rather than natural causes. See *St. Louis* v. *Rutz*, 138 U.S. 226, 247–248; *United States* v. *Claridge*, 416 F. 2d 933 (C.A. 9), certiorari denied, 397 U.S. 961. But the federal law is otherwise where a change in the water flow is sudden and easily perceived. In such circumstances, the dried land that had formerly been part of the river bed does not become the property of the riparian owner; title remains with the State. See, *e.g.*, *Philadelphia Co.* v. *Stimson*, 223 U.S. 605, 624; *Nebraska* v. *Iowa*, 143 U.S. 359, 360–369; *St. Louis* v. *Rutz*, *supra*, 138 U.S. at 245.

The present case involves a sudden change in the location of the river as a result of dredging operations by the federal government. Accordingly, title to the dried portion of the river bed would, under federal law, remain with the State of Arizona. Unlike *United States* v. *Claridge*, 279 F. Supp. 87 (D. Ariz.), affirmed, 416 F. 2d 933 (C.A. 9) (Pet. App. 1c–5c), this is not a situation where the change in the water flow "resulted from gradual erosion and not from avulsion" (Pet. App. 4c). The question in *Claridge* was the quite distinct one of whether "*resulting accretion* passes to the United States as riparian owner" (*ibid.*; emphasis supplied). The court there gave an affirmative response because it determined that the government project involved (Hoover Dam) "did not result in avulsive changes and it was not constructed for the purpose of reducing riverbed holdings" (*ibid.*).

We believe the result reached in *Claridge* was correct and does not conflict with the present case. The facts here show that rechannelization of the Colorado River in this area caused a sudden drying-up of a portion of the river bed—*i.e.*, an avulsive change. In such circumstances, federal law—consistent with the decision of the Arizona Supreme Court under state law—requires that title be quieted in the State.

Accordingly, while it is our view that the court below erred in applying state rather than federal law, that error was immaterial in this case. The petition for a writ of certiorari therefore should be denied.

Respectfully submitted.

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